

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DANNY'S CONSTRUCTION COMPANY,)	
INC., CITY OF CHICAGO <i>ex rel.</i> DANNY'S)	
CONSTRUCTION COMPANY, INC.,)	Case No. 05 CV 4799
)	
Plaintiff,)	
v.)	Honorable Judge Leinenweber
)	
TRAVELERS CASUALTY AND SURETY)	
COMPANY OF AMERICA,)	Magistrate Judge Valdez
)	
Defendant and)	
Third-Party Plaintiff,)	
v.)	
)	
CARLO STEEL CORPORATION,)	
)	
Third-Party Defendants.)	

DANNY'S FIRST MOTION FOR JUDGMENT AS A MATTER OF LAW
PURSUANT TO FED. R. CIV. P. 50(a)

Pursuant to Rule 50(a) of the Federal Rules of Civil Procedure, Plaintiff, City of Chicago *ex. rel* Danny's Construction Company, Inc. ("Danny's"), moves for judgment as a matter of law on the following issues: (1) that the amount earned by Danny's under its contract with Carlo Steel Corporation ("Carlo Steel") for original base contract labor and materials furnished to the project by Danny's is \$6,255,742; and (2) that the total amount paid to Danny's for labor and materials furnished by Danny's on the project is \$5,137,829. Danny's is entitled to judgment as a matter of law on these issues because there is no legally sufficient evidentiary basis to find in favor of Travelers or against Danny's on these issues.

The law and facts that entitle Danny's to judgment as a matter of law are set forth below:

STANDARD FOR RULE 50 MOTIONS

Judgment as a matter of law should be granted when “a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue.” Fed.R.Civ.P. 50(a); *see also Alexander v. Mount Sinai Hosp. Med. Ctr.*, 484 F.3d 889, 902 (7th Cir. 2007). The standard for granting summary judgment mirrors the standard for judgment as a matter of law, such that the inquiry under each is the same. *E.g. Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 149 (2000) (citations omitted); *see also Appelbaum v. Milwaukee Metro. Sewerage Dist.*, 340 F.3d 573, 578 (7th Cir. 2003).

TRIAL EVIDENCE

1. Danny's and Travelers Agreed Upon Joint Stipulations 1-22.
2. Plaintiff's Ex.103, p. 1-62.
3. Plaintiff's Ex. 106.
4. Plaintiff's Ex. 107.
5. Testimony of Richard Linsemann and William Mizell.
6. Expert testimony of Jack Harris.

ARGUMENT

Based upon the joint stipulations and the evidence adduced at trial, it is undisputed that (1) the amount earned by Danny's under its contract with Carlo Steel for original base contract labor and materials is \$6,255,742; and (2) that the total amount paid to Danny's for labor and materials furnished by Danny's on the project is \$5,137,829.

WHEREFORE, Plaintiff, City of Chicago *ex. rel* Danny's Construction Company, Inc., prays for judgment as a matter of law on the following issues: (1) that the amount earned by Danny's under its contract with Carlo Steel for original base contract labor and materials furnished to the project is \$6,255,742; and (2) that the total amount paid to Danny's for labor and materials furnished by Danny's on the project is \$5,137,829.

DATED this 15th day of October, 2007.

Respectfully submitted,

DANNY'S CONSTRUCTION COMPANY, INC,
Plaintiff,

By: */s/ Edward H. Tricker*
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CERTIFICATE OF SERVICE

It is hereby certified that on this 15th day of October, 2007, the foregoing was filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Defendant's counsel of record as follows:

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